

REMARKS/ARGUMENTS

Claims 46, 56, and 57 are amended, and claims 58 and 59 are newly added. Claims 46-59 are now pending in the application. Applicants note that none of the amendments were made for reasons of patentability but to broaden the claims.

Applicants elect with traverse species 1, which was identified in the Restriction as corresponding to claims 46-55. Moreover, Applicants assert that claim 57 is generic to each of species 1-3 and therefore should be examined with elected claims 46-55.

Applicants traverse the Restriction on the grounds that the Restriction does not set forth a *prima facie* case for restriction. As set forth in the MPEP, to establish a *prima facie* case for restriction, the PTO must show that two requirements are met: "(A) [t]he inventions must be . . . distinct . . . ; and (B) [t]here would be a serious burden on the examiner if restriction is not required." (MPEP § 803.) Applicants respectfully assert that the Restriction does not show that either requirement is met.

As discussed in the MPEP, "species must be patentably distinct from each other." (MPEP § 806.04(h).) The Restriction does not identify any characteristics of species 1-3 much less provide any basis for concluding that each of the species is distinct one from another. The Restriction therefore fails to establish the first requirement for a restriction, namely, that the species are distinct. For this reason alone, the restriction should be withdrawn.

Moreover, as discussed above and expressly stated in the MPEP, it is not sufficient merely to establish that the species are distinct. The Restriction must additionally establish that [t]here would be a serious burden on the examiner if restriction is not required." (MPEP § 803.) As set forth in the MPEP, "[f]or purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search." (MPEP §§ 803 and 808.02.) Here, the Restriction does not allege—much less establish—that species 1-3 would each be classified in different classes and/or subclasses, nor does the Restriction allege—much less establish—that each of species 1-3 has acquired a recognized separate status in the field. Likewise, the Restriction does not allege—much less establish—that each of species 1-3 would require a different field of search. In short, the Restriction does not allege—much less establish—the burden requirement necessary to impose a restriction requirement. For this additional reason, the restriction should be withdrawn.

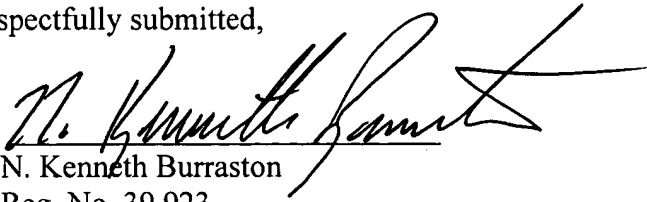
Appl. No. 10/815,400
Election and Amdt. dated December 20, 2005
Reply to Restriction of September 20, 2005

If the Examiner believes that a discussion with Applicants' attorney would be helpful, the Examiner is invited to contact the undersigned at (801) 323-5934.

Respectfully submitted,

Date: December 20, 2005

By


N. Kenneth Burraston
Reg. No. 39,923

Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, Utah 84111-1004
Telephone: (801) 323-5934
Fax: (801) 321-4893